

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
LONNETTE GREENE,

Plaintiff,

-against-

U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT, and DESHLER  
APTS. ASSOCS. L.P.,

Defendants.

ANALISA TORRES, District Judge:

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5/19/17

14 Civ. 3676 (AT) (GWG)

**ORDER**

The Court is preparing its decision on the motions for judgment on the pleadings and summary judgment brought by Defendant U.S. Department of Housing and Urban Development (“HUD”). Although neither party raised the issue, sovereign immunity may bar Plaintiff’s due-process claims against HUD. *See, e.g., Lehman v. Nakshian*, 453 U.S. 156, 160 (1981) (“[T]he United States, as sovereign, is immune from suit save as it consents to be sued.”). “Waivers of sovereign immunity must be ‘unequivocally expressed’; the government’s consent to be sued is strictly construed and cannot arise by implication.” *Diaz v. United States*, 517 F.3d 608, 611 (2d Cir. 2008) (quoting *United States v. Nordic Village Inc.*, 503 U.S. 30, 33 (1992)). A plaintiff bears the burden of demonstrating that sovereign immunity has been waived. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000).


Courts have found that 42 U.S.C. § 1404a waives sovereign immunity for due process claims seeking equitable relief. *Bhattacharya v. Chi. Hous. Auth.*, No. 14 Civ. 9693, 2017 WL 1197095, at \*10 (N.D. Ill. Mar. 31, 2017) (citing *Wilson v. Kemp*, Nos. IP 90-059 C, IP 90-1762 C, 1992 WL 12667348 (S.D. Ind. Nov. 30, 1982)). However, § 1404a applies only to “[t]he Secretary of Housing and Urban Development,” and here, Plaintiff has sued HUD directly. *See* Am. Compl., ECF No. 22.

Accordingly, it is ORDERED that:

1. The parties shall confer as to whether Defendants consent to adding the Secretary of Housing and Urban Development as a defendant in this case; and
2. By **May 26, 2017**, the parties shall file a joint letter addressing how to proceed regarding Plaintiff’s due-process claims against HUD.

SO ORDERED.

Dated: May 19, 2017  
New York, New York

  
\_\_\_\_\_  
ANALISA TORRES  
United States District Judge